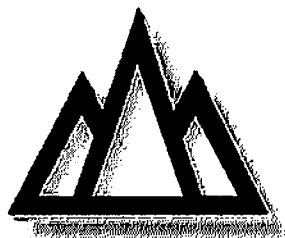


**Glenda Wiles**

**From:** Phillip Taylor [chip3@rkymtn.net]  
**Sent:** Tuesday, February 27, 2007 11:56 AM  
**To:** George Corn  
**Cc:** 'Sarah K. McMillan'; Karen Hughes; Glenda Wiles  
**Subject:** Clarification.

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FEB 28 2007  
Ravalli County Commissioners



*Bitterrooters for  
Planning*

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February 26, 2007

George Corn, Ravalli County Attorney

Dear George:

Our membership is concerned with several issues. We find the interpretation by the planning staff of the intent of our Interim Zoning Initiative to be egregious and self serving for those in the development community. In addition, the empowering of the Board of Adjustment is an attempt to misuse the public trust.

**1. The Board of Adjustment.** The County Commissioners recently passed a resolution, "Resolution to Establish the Ravalli County Board of Adjustment." In this resolution under the powers of the board there are inclusions that seem to give the board the authority to consider and change the interim zoning regulation. The resolution states, "In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of the law and interim zoning regulation, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that bend shall have all powers of the officer from whom the appeal is taken."  
"BE IT RESOLVED that zoning variances may be applied for as set forth in the interim zoning regulation."

We have communicated with you before on the issue of the Board of Adjustment and their current role, but never received a definite answer. As drafters of the Interim Zoning initiative it was our intent, and common sense dictates, that the Board of Adjustment would have no

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authority to hear any appeals to the Interim Zoning initiative itself nor the developing interim regulations and that this Board would only have a duty to perform after the new zoning regulations are developed and adopted by the county in compliance with a comprehensive approach to developing those regulations. The abovementioned resolution seems to give this board some authority to hear appeals to the initiative. We would like your (Ravalli County's) position clarified on this matter. We offer the following statute in support of our position.

**7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum.** If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

In addition, as drafters of the Interim Zoning Initiative, we used the term, "one dwelling per 2 acre." There seems to be some confusion or an overt attempt to change on the part of the planning department and they have added their own interpretation to this statement, expanding the intent from one dwelling per two acres to one of, "an average of one dwelling per two acres." Had we meant an average of one dwelling per two acres we would have used that language when we drafted the initiative. We need clarification from you as to the position of Ravalli County on this issue.

Sunnyside Orchards was recently conditionally approved with some lot sizes less than 2 acres. The condition is a legal opinion from the County Attorney supposedly settling this issue. We strongly suggest that you contact Planning Director Karen Hughes and have her hold off on any submissions and recommendations to the County Commissioners on subdivisions allowing average densities to be considered, specifically those with any dwellings proposed on anything less than two acres. In my (Phillip Taylor) recent discussions with you where you referred to an investigation of case law, I was shocked to hear you give any credence to the position of "average density." I wrote the initiative and my intent was clear. I discussed the 1 per 2 language with you and assistant county attorney Karen Mahr when I drafted it. We discussed the intent of the initiative; we discussed my decision to drop the requirement from 1 dwelling per 40 acres to one dwelling per 2 acres when a number of realtors and individuals thought the 1 per 2 was a better standard to use.

The intent of the initiative was and remains clear. But there has and continues to be an assault on our initiative, an assault on the very well being of average county residents by realtors and builders as they hammer away at the very foundation of democracy, spending huge sums of money on lawsuits against the county (three so far) and large sums attempting to defeat the initiative. Their selfish ideology is foreign to the principles of democracy and the rule of law. **They want us to go away, but we are not going away. Our members and the average citizens of this county are very angry at the blatant disregard for their well being and their majority vote!**

We want your legal opinion as to the 1 per 2 intent and the Board of Adjustment issues contained in this letter as soon as possible. I suggest you search your heart on these issues as well as the law books. If we are successful and we prevail in electing decent, caring, law abiding and **competent** commissioners in the upcoming elections, there will be a new day in Ravalli County and a lot of new faces.

And finally, when drafting the new zoning regulations we believe strict adherence and compliance with MCA 76-2-203 and MCA 76-2-206 are essential. Each emergency situation

must be visited and a plan designed that includes actions to address each emergency and/or the criteria set forth in these statutes. In my (Phillip Taylor's) opinion the ongoing planning effort is deficient, is mired down in extraneous efforts that are, through lack of ability or intentional design, creating delays and may defeat the goal of the initiative we worked so hard to pass. Rather than pontificate and attempt to infuse the initiative with meanings that are contrary to the original intent, the Planning Director and/or County commissioners need to get to the job at hand and do the work required by the initiative.

**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- (a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and
- (b) designed to:
  - (i) lessen congestion in the streets;
  - (ii) secure safety from fire, panic, and other dangers;
  - (iii) promote public health and general welfare;
  - (iv) provide adequate light and air;
  - (v) prevent the overcrowding of land;
  - (vi) avoid undue concentration of population; and
  - (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

**76-2-206. Interim zoning map or regulation.** (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

- (a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and
- (b) the county:
  - (i) is conducting or in good faith intends to conduct studies within a reasonable time; or
  - (ii) has held or is holding a hearing for the purpose of considering any of the following:
    - (A) a growth policy;
    - (B) zoning regulations; or
    - (C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

We would like to receive a written response to the items we have identified as needing clarification as soon as possible. If there are disagreements, we need to resolve those immediately. Thank you for your prompt attention to these issues.

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Stewart Brandborg

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Phillip Taylor

Thank you,

Phil Taylor

2/27/2007